The learned Public Trustee, Mr. Neal, appeared in person. He said at once that there is no section or rule which expressly gives the Public Trustee a right or power to petition. His argument was that by section 8 (ii) of the Public Trustee Enactment the Public Trustee and the family are equally entitled to obtain a grant of administration and that an equal right to petition is necessarily implied.

This argument is incorrect. A statutory corporation has no powers except those conferred upon it by the statute.

The power to receive a grant is one thing. The right to initiate proceedings is another. The latter is not implied. This is made particularly clear by sections 23 and 25 of the Probate and Administration Enactment where the power to petition for, and the power to receive, a grant of representation are conferred separately and expressly.

There is no reason why a right to petition should be given. It would rarely be of real use and would sometimes be dangerous. No inconvenience results from its absence. The proper and entirely satisfactory procedure is for the widow or next-of-skin to lodge a petition for a grant to the Public Trustee, with his consent, the petition may still be prepared in his office. The essential difference is that the facts are proved by someone who has personal knowledge of them. The Public Trustee is rarely in a position to prove them and and if weak evidence is acted on in such matters, then sooner or later substantial sums will be paid out to the wrong persons.

In a case where no member of the family is resident in Malaya the petition can be filed by an attorney; nothing in this judgment affects the question whether the Public Trustee can petition in the capacity of an attorney.

This petition is incompetent and ought to be dismissed but at the conclusion of the argument Mr. Neal pointed out that the deceased in this particular case was a public servant so that the defect might be curable under section 25 of the Probate and Administration Enactment. The petition was therefore adjourned generally for this suggestion to be considered.

Petition adjourned generally.

WOON ONN v. TAN YEE GEK (f).

[App. Civ. Juris. (Spenser-Wilkinson, J.) August 3, 1950]

[Raub — Civil Appeal No. 2 of 1950]

Landlord and tenant — Control of Rent Ordinance, 1948, ss. 3(4), 12 and 14 — Rent at a lawful rate in arrears for fourteen days.

In this case the claim was by a landlord to eject a tenant after the expiration of a notice to quit, the claim being brought without the previous permission of the Rent Board on the ground that rent at a lawful rate had been in arrears for fourteen days under the proviso to section 12 of the Control of Rent Ordinance, 1948.

The main defence to which the evidence of the defendant was directed during the trial was that there had been a tender. The learned President disbelieved the evidence of the defendant and his witness on this point and found as a fact that there had been no tender. The appellant on the appeal raised what was, in effect, a new point of law, although it arose from facts put in evidence at the hearing. The amount of rent which the tenant had been paying to the landlord for a considerable period was $60/- per month. In fact, however, the standard rent of the premises was only $35/- per month as appears from the findings of the Rent Board on an application for reduction of rent which was made before the issue of the plaint in this case but after the notice to quit had been given. As appears from his grounds of judgment the learned President accepted the finding of the Board on this question of the standard rent.

Held, that upon the facts which were before the learned President he should have held that a rent at a lawful rate had not been in arrear and that the proviso to section 12 of the Control of Rent Ordinance, 1948, did not, therefore, apply and he should have dismissed the plaintiff's claim.

CIVIL APPEAL from Sessions Court, Raub.

A. K. Sen for the appellant.

A. J. Bostock-Hill for the respondent.

Spenser-Wilkinson, J. : — The claim in this case was by a landlord to eject a tenant after a notice to quit, the claim being brought without the previous permission of the Rent Board on the ground that rent at a lawful rate had been in arrears for fourteen days under the proviso to section 12 of the Control of Rent Ordinance, 1948.

The main defence to which the evidence of the defendant was directed during the trial was that there had been a tender. The learned President disbelieved the evidence of the defendant and his witness on this point and found as a fact that there had been no tender. I see no reason to disturb the finding of the learned President on this question of fact which he decided after seeing and hearing the witnesses.

The appellant on the appeal raised what was, in effect, a new point of law, although it arose from facts put in evidence at the hearing. The amount of rent which the tenant had been paying to the landlord for a considerable period was $60/- per month. In fact, however, the standard rent of the premises was only $35/- per month as appears from the findings of the Rent Board on an application for reduction of rent which was made before the issue of the plaint in this case but after the notice to quit had been given. As appears from his grounds of judgment the learned President accepted the finding of the Board on this question of the standard rent.

The appellant now argues that as the tenant had for many months been paying to the landlord $60/- per month when the rent should only have been $35/- he had in effect paid a considerable amount of rent in advance so that no rent was in arrear for the month of December as alleged in the plaint. Indeed, at that time the landlord was indebted to the tenant on rent account.

The respondent objected, in the first place, that this was an entirely new point which was not raised at the trial and was, therefore, not open to the appellant on the appeal. I do not think, however, that this is a valid objection though it might affect the question of costs. The facts upon which this point depends were before the learned President, and in my opinion he ought to have considered it, especially as both parties were unrepresented before him. In any event, the point is open upon review if not on appeal.

The substantial argument put forward on behalf of the respondent is that no rent for the month of December either at the lawful rent or any other rent was ever in fact tendered and, therefore, the rent for that month was in arrear notwithstanding that the plaintiff had received more rent than she should have done in respect of other months. It was urged that although sub-section (4) of section 3 of the Control of Rent Ordinance states that a tenant who has paid too much rent to his landlord may recover the excess, that sub-section does not go on to say that he may set off that excess against any rent due and payable. The language of this sub-section was contrasted with the language of section 14 of the English Rent Restriction Act, 1920, which specifically provides that the tenant may deduct from any rent payable to him by the landlord any sum which under the Act is recoverable by a tenant from the landlord or payable or repayable by a landlord to a tenant. It was argued, therefore, that the excess paid by the tenant could not be set off against rent as it accrued.

The English Rent Restriction Act, 1920, was not the first English Act dealing with this subject and at the time when that act was passed there had been many decisions of the Courts on the earlier Acts, to which the wording of later Acts may have been directed. Not only are there differences between the general scheme of the Control of Rent Ordinance and the English Rent Restriction Acts but also doubts have been expressed as to whether some of the more technical considerations affecting the question of rent in England apply to monthly tenancies in this country. I am, therefore, not prepared to draw any conclusion from the difference of wording to which my attention has been directed in this case.

Apart from the provisions of sub-section (4) of section 3 of the Ordinance it might have been said that the unnecessary payment of the excess over $35/- per month by the tenant to the landlord was a payment made under a mistake of law which could not be recovered. But the Ordinance clearly takes this matter out of the common law rule (if, indeed, it would apply in this particular instance) and as all the excess rent paid is recoverable by the tenant I find it very difficult to see why it cannot be set-off against other rent falling due. The landlord had clearly received, on rent account, a considerable sum of money over and above the rent due and until this excess had been reduced by non-payment of a sufficient number of months rent to balance it I find it very difficult to see how it could be said that any rent was in arrear. I express no opinion as to what would be the position if the money had been received by the landlord on some other account, but this money was clearly received and accepted by the landlord as rent.

For these reasons I am of opinion that upon the facts which were before the learned President he should have held that rent at a lawful rate had not been in arrear and that the proviso to section 12 of the Control of Rent Ordinance, 1948 did not, therefore, apply and he should have dismissed the plaintiff's claim.

The result is that the appeal is allowed and the order of the learned President is set aside.

Appeal allowed — Order set aside.

In re SIN TECK HONG OIL MILLS LIMITED.

[Orig. Civ. Juris. (Taylor, J.) August 1, 1950]

[K. L. — Companies Winding-Up No. 1 of 1950]

Companies Ordinance, 1940, rule 8(2) — Voluntary winding-up — Procedure — Confirmation of nomination of liquidator.

A Summons-in-Chambers cannot issue except in a pending cause or matter.

Applications to the Court in voluntary winding-up cannot proceed by the continuous file method under rule 8 (2) of the Winding-Up Rules; the ordinary procedure is by Originating Summons.

In a creditor's voluntary winding-up the Court has no power to confirm the nomination of a liquidator by the company so as to make it effective as regards creditors.

APPLICATION to confirm the appointment of a liquidator.

E. D. Shearn and *D. G. Rawson* for the applicant.